IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

Jerry Don Knowles, on behalf of himself and all others similarly situated,	)	
v.	)	Case No. 14-CV-00690-F
Mewbourne Oil Company,	)	
Defendant.	)	

JOINT STATUS REPORT AND DISCOVERY PLAN

Date of Rule 26(f) Conference: August 22, 2014, 4 p.m.
Date of Scheduling Conference: Sept. 4, 2014 at 2:45 p.m.

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JURY TRIAL DEMANDED ___X____ NON-JURY TRIAL _____

1. BRIEF PRELIMINARY STATEMENT.

Mewbourne Oil Company ("Mewbourne") operates oil and gas wells and markets production attributable to operating and non-operating interests in wells located within the State of Oklahoma. Plaintiff and the putative Class ("Class") are royalty owners in oil and gas wells operated by Mewbourne. Plaintiff brought this action as the representative of a putative Class pursuant to Fed. R. Civ. P. 23 (a) and (b)(3). The proposed Class is defined by Plaintiff as:

> (a) All royalty owners of Mewbourne Oil Company operated or marketed Oklahoma wells that have produced gas and/or gas constituents (such as residue gas, natural gas liquids, helium, nitrogen, or condensate) from January 1, 1993 to the time Class Notice is given.
>
> (b) Excluded from the class are: (1) Office of Natural Resources Revenue f/k/a the Mineral Management Service (Indian tribes and the United States); (2) Defendant and its affiliates, employees, officers, and directors; (3) the State of Oklahoma, and its subdivisions, agencies and instrumentalities, (4) Any NYSE or NASDAQ listed company (and its affiliated entities and subsidiaries) engaged in oil and gas exploration, gathering, processing, or marketing, (5) royalty owners, if any, whose claims are wholly barred by any prior class action settlement (but they remain in the class if they have any claim(s) not so barred, but only as to claims not so barred); (6) overriding royalty interests; and (7) royalty owners to the extent that in the lease creating the royalty interest expressly authorized all of the deductions taken by Defendant.

Plaintiff claims that Mewbourne improperly reduced royalty owner revenue by charging Oklahoma royalty owners for fees and volumetric reductions associated with gathering, compression, dehydration, treating, and processing ("GCDTP") services in violation of Oklahoma law.

Defendant denies Plaintiff's allegations. Defendant denies that the claims in this case are proper for class certification under Fed. R. Civ. P. 23. Defendant Mewbourne denies that it has improperly reduced royalty owner revenue, and contends that it has properly paid royalty under the oil and gas leases, and Oklahoma law.

2. JURISDICTION.

This case was removed from state court. Jurisdiction exists under the Class Action Fairness Act, 28 U.S.C. § 1332(d) and 28 U.S.C. § 1453.

3. STIPULATED FACTS.

a. The matter in controversy exceeds the sum or value of $5,000,000, exclusive of interests and costs.
b. Mewbourne is a Delaware corporation, with its principal place of business in Texas.
c. Mewbourne is an independent oil and gas company, and an operator of oil and gas wells within the State of Oklahoma.
d. Plaintiff is a citizen of Oklahoma.
e. The number of members of the proposed plaintiff class exceeds 100.
f. Venue is proper in this Court.

4. CONTENTIONS AND CLAIMS FOR DAMAGES OR OTHER RELIEF SOUGHT.

A. **Plaintiff**:

1. Plaintiff contends that under Oklahoma law (absent specific language to the contrary in the oil and gas lease), a royalty owner bears no costs related to transforming raw gas into marketable condition, which are the GCDTP service costs mentioned above.
2. Plaintiff contends that Mewbourne knowingly made improper payment of royalties to the Class because Mewbourne knew it or those that it hired were deducting GCDTP service costs from revenues used to pay royalty owners but has hidden that reality from the Class.
3. Mewbourne also had an obligation to pay royalty on fuel gas used off the lease premises, but Mewbourne paid no royalty on such gas and also hid that fact from its Oklahoma Well royalty owners.

4. In every check stub mailed to Plaintiff and each Class member, Mewbourne uniformly and systematically claims the royalty owners have been paid royalty, in full, for all oil and gas and that Mewbourne has deducted nothing from the royalty owner payments for gathering, compressing, treating, processing, dehydrating, and fuel.

5. Plaintiff's claims are based on breach of lease.

6. From the time Mewbourne became the operator of the Class wells, it has continuously breached its duties to the Plaintiff and the Class and used its position of trust to secretly and unlawfully retain a portion of the Class's royalty for its own benefit and to the detriment of the Class.

7. Plaintiff, after discovery, will satisfy all of the requirements for class certification.

B. Defendant:

1. Certification of any class is not appropriate. The requirements of Fed. R. Civ. P. 23 cannot be met. Trial of the claims of thousands of royalty owners would require lease-by-lease and well-by-well analysis for thousands of gas sales, would be unmanageable, and individualized issues would predominate over common issues

2. Under Oklahoma law, the terms of each oil and gas lease must be examined to determine the issues raised relating to the alleged improper payment of royalties.

3. Force pooled royalty interests should be excluded from the proposed class and/or have their rights determined by the OCC, as previously directed in multiple decisions from the Court of Civil Appeals.

4. Mewbourne contends that its royalty payments are consistent with the obligations under Mewbourne's leases and other instruments and that Plaintiff's claims fail both legally and factually.

5. Plaintiff's claims are barred by waiver, estoppel, ratification, laches or unclean hands.

6. Mewbourne has paid all sums due.

7. The claims asserted are barred in whole or in part by settlement, release, collateral estoppel, res judicata, novation, or accord and satisfaction.

8. Plaintiff's claims may be barred in whole or in part by the statute of limitations.

9. There is no legal basis for Plaintiff's contention that GCDTP expenses must invariably be borne by the lessee. Rather, whether any post-production expense can be shared by a royalty owner depends entirely upon whether the gas is, at the time the charge is incurred, "marketable," and whether those expenses enhance the value of the gas. *See Mittelstaedt v. Santa Fe Minerals, Inc.*, 954 P.2d 1203 (Okla. 1998).

10. There is no factual basis for Plaintiff's contention that Mewbourne "knowingly made improper payment of royalties to the Class." Rather, because when gas is marketable is a question of fact to answered with respect to production from each well at issue, Mewbourne could not possibly "know" that it was invariably required to bear all GCDTP expenses.

11. Whether Mewbourne was obligated to pay royalties on fuel used off the lease depends on when the gas at issue was "marketable," which is a question of fact with respect to production from each well at issue.

12. Plaintiff has not pleaded any allegations concerning any alleged check stub fraud, and there is no basis in his current pleading for any such contention.

13. As a matter of Oklahoma law, Mewbourne does not occupy any position of "trust" premised upon the Production Revenue Standards Act. *See Gaskins v. Texon, LP*, 321 P.3d 985 (Okla. Ct. App. 2013) (writ denied Dec. 2, 2013). ("[T]here is nothing in that language requiring the imposition of an implied trust.").

5. APPLICABILITY OF FED. R. CIV. P. 5.1 AND COMPLIANCE.

No

6. MOTIONS PENDING AND/OR ANTICIPATED.

a. Motion to amend to add parties: November 3, 2014.
b. Motion to amend to add causes of action: January 30, 2015.
c . Motion for Class Certification:

(1) Plaintiff's motion for class certification and plaintiff's expert(s) reports: July 10, 2015 (along with all necessary deposition dates in the following three weeks when the expert(s) can be deposed, at Defendants' election).
(2) Defendants' response to plaintiff's motion and Defendants' expert(s) Reports: September 11, 2015 (along with all necessary deposition dates in the following three weeks when the expert(s) can be deposed, at Plaintiff's election).
(3) Discovery Deadline on class certification: October 12, 2015.
(4) Plaintiff's reply to Defendants' response and any rebuttal expert reports: October 12, 2015.
(5) Class certification hearing to be set at the discretion of the Court for a date in November 2015 or after.
(6) After the Court's ruling on the motion for class certification and any appeal thereof, a supplemental case management conference shall be scheduled.

d. The parties anticipate filing a joint motion for protective order. Mewbourne requests that such an order include an Attorney Eyes Only designation for the purpose of permitting Mewbourne to acquire—should it become necessary—evidence of other available contractual terms from midstream purchasers of gas in the counties in which the wells at issue are located.

7. COMPLIANCE WITH RULE 26(A)(1).

Initial Disclosures to be exchanged no later than August 28, 2014 with documents specified by Rules 26(a)(1)(A)(iii)-(iv) exchanged on a rolling basis beginning September 19, 2014 and to be completed by as soon as practicable thereafter.

8. PLAN FOR DISCOVERY FOR CLASS CERTIFICATION PURPOSES.

A. The discovery planning conference (Fed. R. Civ. P. 26(f)) was held on August 22, 2014.

B. The parties anticipate that discovery for class certification should be completed by October 12, 2015, and subject to the above deadlines.

The parties propose that the Court defer any further scheduling until after the Court rules on class certification.

C. In the event ADR is ordered or agreed to, what is the minimum amount of time necessary to complete necessary discovery prior to the ADR session? ADR may be most appropriate following the decision on class certification.

D. Have the parties discussed issues relating to disclosure or discovery of electronically stored information, including the form or forms in which it should be produced, pursuant to Fed. R. Civ. P. 26(f)(3)(C)? Yes.

E. Have the parties discussed issues relating to claims of privilege or of protection as trial-preparation material pursuant to Fed. R. Civ. P. 26(f)(3)(D)? Yes.

To the extent the parties have made any agreements pursuant to Fed. R. Civ. P. 26(f)(3)(D) and Fed. R. Civ. P. 502(e) regarding a procedure to assert claims of privilege/protection after production and are requesting that the court include such agreement in an order, please set forth the agreement in detail below and submit a proposed order adopting the same.

The parties are conferring on an Agreed Protective Order.

F. Identify any other discovery issues which should be addressed at the scheduling conference, including any subjects of discovery, limitations on discovery, protective orders needed, or other elements (Fed. R. Civ. P. 26(f)) which should be included in a particularized discovery plan. The impact of applicable limitations periods upon the scope of discovery.

9. ESTIMATED TRIAL TIME.

Plaintiff requests the testimony of witnesses at the class certification hearing be presented by affidavit and deposition alone and anticipate the class certification hearing could be finished in 2 hours (1 hour per side) with presentation by counsel and without live witnesses.

Mewbourne states that it cannot determine whether live witnesses will be necessary until discovery on class certification issues has been completed and Plaintiff's motion for class certification has been filed. Mewbourne anticipates that a hearing with live witnesses would take 1-2 days.

10. BIFURCATION REQUESTED: Yes.

The parties agree that the Court should resolve class certification before scheduling a trial on the merits.

11. POSSIBILITY OF SETTLEMENT: Fair

12. SETTLEMENT AND ADR PROCEDURES:

A. Compliance with LCvR 16.1(a)(1)--ADR discussion: Yes.

B. The parties request that this case be referred to the following ADR process: The parties request that ADR with a neutral third party experienced in oil and gas matters be scheduled only after class certification issues have been resolved.

13. PARTIES CONSENT TO TRIAL BY MAGISTRATE JUDGE? No.

14. TYPE OF SCHEDULING ORDER REQUESTED.

Specialized, in accordance with the 6. a-d above.

Submitted this 28th day of August, 2014.

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